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CENTRAL FAX CENTER****JUL 18 2007**REMARKS

Applicant acknowledges and thanks the Examiner for the indicated allowable subject matter in claims 1, 5, 7, 8, 11, 12, 15-21, 32-33 and 48. Applicant respectfully requests reconsideration of this application as amended. Claims 1-5, 7-21, 32-35, 44-46, and 48 are currently pending in this application.

Response to Claim Objections

Claims 1-5, 7-21, 32-35, and 48 are objected to because of certain informalities. As amended, Applicant believes the claims have been corrected to overcome the objections in claims 1, 2, 5, 9, 19, 33, 34, and 48.

With respect to claim 15, Examiner states:

"In claim 15, the recitation of "the catheter capable of diagnostic and therapeutic purposes" appears to be functional language unsupported by structure to produce such a function."

Applicant draws the attention of the Examiner to MPEP 2173.05(g) which states the following:

"There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. In re Swinehart, 439 F.2d 210, 169 USPQ 226 (CCPA 1971)."

The MPEP 2173.05(g) provides that a functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the art in the context in which it is used. A functional limitation is often used to define a particular *capability* or purpose that is served by the recited element, ingredient or step.

In claim 15, the catheter is capable of both diagnostic and therapeutic purposes by the use of the apparatus of the claim and is therefore supported by structural limitations.

With respect to claims 12 and 18, Examiner states:

"In claims 12, 18 it appears that the lumen is merely further defined by its intended use. It is unclear to what further structural limitation has been set forth."

Claims 12 and 18 are Markush group claims that are an acceptable form of claim expression as in MPEP 2173.05(h) which states:

"The use of Markush claims of diminishing scope should not, in itself, be considered a sufficient basis for objection to or rejection of claims."

Claims 12 and 18 provide for a lumen that is a specific type of lumen which is a structural limitation sufficient under the MPEP.

The Examiner has objected to claim 48 because the term "the at least one light signal received from the proximal end" lacks antecedent basis. However, proper antecedent basis for "the at least one light signal" exists in line 4 of the claim. Applicant has amended claim 48 to further clarify "the at least one light signal".

Response to 35 U.S.C. §101 Rejections

The Examiner has rejected claims 2-4, 9-10, 13 and 14 because the claimed invention is directed to non-statutory subject matter. Specifically, the Examiner cites claims 2, 9, and 13 as requiring "the patient" as part of the claimed invention. Without agreeing with the Examiner, claims 2, 5, 9, 19, 33, and 34 have been amended to remove "the patient". Therefore, the rejection based on 35 U.S.C. §101 is overcome.

Response to 35 U.S.C. §102(b) Rejections

Claims 34, 35 and 44-46 were rejected under 35 U.S.C. §102(b) as being anticipated by Kittrell et al. (US 5,199,431).

Claims 34 and 44 both require the optical fiber to be bonded to at least one point along an inner surface of a coil-like enclosure.

Kittrell et al. shows a laser catheter with optical fibers carrying laser light but does not show optical fiber bonded to a coil-like enclosure.

With respect to claim 34, the Examiner has not given any weight to the structure set forth in the method claim because it is not used in a manipulative sense.

However, the claim requires the "inserting" of an apparatus which is a manipulative step as required by the examiner. Claim 34 provides that the apparatus being *inserted* comprises, among other elements, an optical fiber to be bonded to at least one point along an inner surface of a coil-like enclosure.

According to MPEP 2163 (II) (A)(1), the term "comprising" is a term of art used in claim language which means the named elements are essential, but other elements may be added and still form a construct within the scope of the claim.

Therefore, the optical fiber to be bonded to at least one point along an inner surface of a coil-like enclosure is part of the apparatus that is being *inserted* and therefore is being used in a "manipulative" sense.

Claim 44 has been amended to remove the "adapted to" language to more clearly define the invention.

Therefore, the limitation requiring the optical fiber to be bonded to a coil-like enclosure in claim 44 is not suggested in Kittrell et al.

In conclusion, Applicant respectfully submits that in view of the amendments and arguments set forth herein, the applicable rejections have been overcome.

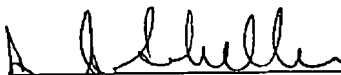
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Respectfully submitted,

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